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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

JESSICA ILIC,

Plaintiff,

v.

WESTFIELD GIFT CARD
MANAGEMENT, INC. et al.,

Defendants and Appellants;

KAMBIZ KAZEMI et al.,

Objectors and Respondents.

E046146

(Super.Ct.No. INC035406)

OPINION

APPEAL from the Superior Court of Riverside County. Harold W. Hopp, Judge.
Dismissed.

Strook & Strook & Lavan, Julia B. Strickland, Stephen J. Newman, JiAe Moon,
and Darius K.C. Zolnor for Defendants and Appellants.

Finkelstein & Krinsk, Jeffrey R. Krinsk, Mark L. Knutson, and Jennifer L. MacPherson for Objectors and Respondents.

No appearance for Plaintiff.

Defendants and appellants Westfield Gift Card Management, Inc. (WGCM) and American Express Travel Related Services Company, Inc. (American Express) allegedly sold and marketed gift cards that were subject to a \$2 monthly service fee starting in the 13th month after the initial purchase date. Objectors and respondents Kambiz and Katayoun Kazemi filed a class action complaint in San Diego (*Kazemi v. Westfield America, Inc.*, San Diego Superior Court case No. 37-2008-00075526-CU-BT-CTI) against WGCM's parent company, Westfield America, Inc.{CT 172-188} The class action complaint alleged causes of action for violation of the Consumer Remedies Act, false advertising, unlawful business practice in violation of Business and Professions Code sections 17200 et. seq., unfair and fraudulent business practices in violation of Business and Professions Code sections 17200 et seq., conversion, unjust enrichment, and violation of Civil Code section 1671. In all their causes of action, the Kazemis challenged features of the gift cards, including the \$2 per month service fee.

American Express and an affiliate of WGCM had been sued in an earlier action (*Jessica Ilic et al. v. Westfield Shopping Town et al.*, Riverside County Superior Court case No. INC035406) (the *Ilic* action) on causes of action challenging certain features of the gift cards. Ilic and defendants settled that action on a class basis. The settlement agreement and ensuing judgment included a broad general release barring future litigation of any claims relating to the gift cards, whether known or unknown at the time

of settlement. The trial court approved the settlement and found that notice had been sufficient and that the class representative and her counsel were adequate.

In the current action, defendants moved in the Superior Court of Riverside County, pursuant to its continuing jurisdiction over the settlement agreement in the *Ilic* action, to enforce that settlement and enjoin the action of the Kazemis. The trial court denied the motion, and this appeal ensued.

We requested additional briefing as to whether any interpretation of the class settlement order in the *Ilic* action that purported to waive the protections of Civil Code section 1749.5 would be void as a violation of public policy under Civil Code section 1749.51. Defendants thereupon filed with this court a request for dismissal of this appeal with prejudice. Defendants also filed a request for judicial notice of the legislative history of California Statutes of 2002, Chapter 815, Assembly Bill 2331. The request for judicial notice is denied.

The Kazemis filed an opposition to the request for dismissal, urging this court to address the issue on the merits because the issue is one of continuing public interest. We decline to exercise our discretion to reach the issue. The matter may be addressed more appropriately on the basis of a fully developed record in the trial court.

We will therefore grant the motion to dismiss with prejudice as requested.

DISPOSITION

The appeal is dismissed. Costs shall be awarded to respondents.

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HOLLENHORST

Acting P. J.

We concur:

MCKINSTER

J.

RICHLI

J.